52 S.B.Civil Writ Petition No.733/1999

Date of Order : 04-08-2004

HON'BLE MR. N.P.GUPTA,J.

Mr.Anand Purohit , for the petitioner.
Mr.N.S.Charan , for private respondents.
Mr.S.N.Tiwari , Dy.G.A.

Heard learned counsel for the parties and perused the pleadings and documents.

The petitioner seeks a writ of prohibition against the respondent no.5 to 16 not to disturb the petitioner's working on the quarry No.59/B specifically known as Kala Nada area in Ulodi Range Measuring 25'x240' by themselves or through their agents, so also wants the mandamus against respondent nos. 1 to 3 to see that the rights of the petitioner to work on the aforesaid quarry are allowed to be used without any disturbance on the part of respondents no.5 to 16. Then a direction is sought against respondent no.4 S.P., Nagaur to see that all help is given against the activities of the respondent nos. 5 to 16. Then other prayer is to call for the records of Civil Misc. Case no. 33/98 (Sawai & ors. Vs. Razaak and ors.) pending before the Civil Judge (Jr.Div.), Makrana and criminal misc. Ase no. 3/98 pending before learned Sessions Judge, Merta and quash both these proceedings being frivolous and without any basis. Then prayer has been made for some interim orders.

From perusal of the writ petition, it transpires that according to the petitioner he claims to be the license holder of quarry no. 59-B measuring 25 x 240 ft. for which there is a joint license in the name of the petitioner and Zummaddin, and time and again disputes have been raised by the respondents no. 5 to 16 to claim a part of the quarry, and various litigations are pending before the lower courts. The main litigation is said to be Civil Suit No. 33/98, and another being proceeding under Sections 145 and 146 Cr.P.C. It is alleged that said Zummaddin obtained a decree qua his part of the quarry even though he was not entitled to one inch of land but by luring the other parties, and by playing the game of the deceit. It is then alleged that none of the private respondents have any

right on the property but Zummaddin has evolved a device by hiring other persons, and has created a situation where it has become impossible for the petitioner even to touch the marble lying in the quarry. In this sequence a suit has been filed by Sawai (respondent no.5), and others along with application for temporary injunction which is pending, wherein according to the State, license is in the name of Zummaddin, and the petitioner. It is then alleged that the petitioner is feeling helpless as authorities are not taking any proceedings pending disposal of the suit. According to the petitioner he is an absolute owner, and there is no injunction against him but the police is said to be in hand and gloves with respondents no. 5 to 16. Regarding 145 Cr.P.C. proceedings, it was pleaded that the respondents tried to get the property attached by the police, and the petitioner has moved an application before the learned District Judge, Merta for transferring these proceedings, it is alleged that those proceedings are not based on solid basis. It is with these allegations that the above prayer has been made. Significantly, the petitioner has produced only the title page of the suit while certified copy of the suit has been produced on record as Annexure R.5/5. A perusal thereof shows that the parties are family relations, and there is some dispute as according to the plaint, the license was wrongly renewed in the name of the petitioner and Zummaddin ignoring ancestral rights of the other parties.

While arguing the writ petition, learned counsel for the petitioner relies on the Judgment reported in AIR 1999 (Allahabad),32 (M/s. Geeta Pumps Pvt. Ltd., Saharanpur Vs. District Judge, Saharanpur and ors.). For the purpose of contending that in exercise of power under Art. 226 of the Constitution, this court should direct that all the litigations pending between the parties, be tried together in one court and at one place.

Having perused the writ petition, and documents annexed thereto, so also the replies, what I find is that litigation was initiated by the respondent nos. 5 to 16 at Makrana, but then other litigation is said to have been initiated by defendant no.2 therein, against some other persons at Parbatsar. Details of parties, who are litigating parties, in all these litigations are not before the court, likewise, I also find that document Annex.R/5/7 is the application filed under O.9 R.13 CPC by one of the defendants requesting for setting aside the judgment dated 25.8.98. This writ petition has been filed on 8.3.99. It is not shown on record as to what is

the latest position of various litigations pending between the parties, nor details of all pending applications are given.

It thus appears that parties are having litigations and counter litigation between them, and as I find from Annex.R/5/7, application for temporary injunction was decided, and thereby some order was passed. It is not shown as to what has happened thereafter.

It is contended by learned counsel for the petitioner that this reply filed by respondent nos. 6 to 8, 10,12 and 13 cannot be looked into by this court in view of order passed by this court dated 7.8.99 and 18.1.01. Suffice it to say, that vide order dated 7.8.99, notices were ordered to be issued to respondent nos. 1 to 4, then by order dated 18.1.2001, it was ordered though notices were issued to only respondent no.1 to 4, but the notices were issued by the office inadvertently to other respondents, and hence they were ignored, because they were not intended to be served by this court, and treating the service on other respondents to be completed, case was ordered to be taken up for admission.

I do not find anything on record to show that material place on record by respondents was ordered to be excluded from record. That apart, since documents produced by respondents in reply, as referred to above, are certified copies of documents, and as such, even without taking into consideration the pleadings of these parties in the reply, documents can very well be considered.

From the above discussion, it is clear, firstly, that there appears to be family dispute, and various parties are litigating in the litigations, and counter litigations. May be that same have been instituted by different people by invoking different provisions of law, but then each party may have his own stories to say. This coupled with the fact that even in the writ petition, the petitioner has not cared to post this Court with all the details of the litigation which are said to be pending. In these circumstances, I do not find any sufficient ground whatever to grant the relief either as prayed in the writ petition, or as argued by the learned counsel for the petitioner.

So far as the judgment in M/s. Geeta Pumps Pvt. Ltd. is concerned, that was a case on its own facts, inasmuch as, therein the consumer of energy had initiated litigations after litigations unilaterally against the energy supplier, and therein various contradictory orders were obtained. It was found that the process of law has been continuously abused by the consumer, inasmuch as, as many as nine suits arising out of the same cause of action between the same parties relating to the same supply, and same agreement,were filed and several orders were obtained which were difficult to monitor and contest. It was also considered that it was the consumer who was creating precarious position for the supplier as orders were obtained restraining supplier, from laying down fresh line, and at the same time orders were obtained directing the supplier to continue to supply electricity every day for 24 hours. Likewise, injunctions were obtained for restraining the supplier from changing the meter, and so on. It was in these circumstances, that using the expression “the facts and circumstances of this case satisfies ingredients attracting the applications thereof..”, and then only order was passed requisitioning record of the suits by special messenger directing the record to be made available for perusal of the Court on the next date of hearing fixed being 21.7.1998, and interim orders were passed. In my view, with all respect to the Hon'ble Judge passing that order, this order can hardly be said to be a legal precedent.

So far as the case in hand is concerned, as found above, I do not find sufficient ground to have been made out for entitlement of the petitioners to relief as prayed in the writ petition, or as prayed during the course of arguments.

The net result is that I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N.P.GUPTA),J.

Srawat/-